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82-1498

No.

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1982

JEFF REICH,
Petitioner,

vs.

GALEN LARSON, County Clerk of the County of Fresno, and WILLIAM FRENCH SMITH, Attorney General of the United States of America,
Respondents.

Petition For a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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QUESTIONS PRESENTED

Can government alter a candidate's political statement, and when he objects, impose insufferable jurisdictional hurdles to prevent a court challenge?

More specifically, may a candidate who challenges the government translation and distribution of his "candidate's statement" in another language, including government subscription of his name to the challenged translation, bring suit in the district court where he resides, or must he litigate in the District of Columbia?

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of the United States of America,
Respondents.

Petition For a Writ of Certiorari
to the
United States Court of Appeals
for the Ninth Circuit

The petitioner, Jeff Reich, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit entered in this proceeding on January 4, 1983.

OPINIONS BELOW

The opinion of the Court of Appeals, 695 F.2d 1147 (1983), and the unreported opinion of the District Court for the Eastern District of California appear in the Appendix hereto.

JURISDICTION

The judgment of the Court of Appeals for the Ninth Circuit was entered on January 4, 1983. This petition for certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED

First Amendment.

> Congress shall make no law . . . abridging the freedom of speech, or of the press . . . .

United States Code, Title 42:

§ 1973(l)(b), [Voting Rights Act, § 14(b)].

> No court other than the District Court for the District of Columbia . . . shall have jurisdiction to issue any declaratory judgment . . . or any restraining order or temporary or permanent injunction against the execution or enforcement of any provision . . . of this chapter or any action of any federal officer or employee pursuant hereto.

§ 1973 aa-la(c).

> Whenever any State or political subdivision subject to the prohibition of subsection (b) of this section provides any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, it shall provide them in the language of the applicable minority group as well as in the English language . . . .

STATEMENT OF THE CASE

This action concerns the abridgement of the First Amendment right to freedom of political expression by bilingual ballot provisions of the Voting Rights Act.

The basis for Eastern District of California jurisdiction is 28 U.S.C. § 2201, and underlying that, petitioner asserts that 28 U.S.C. § 1331 and § 1343(3) provide grounds for such jurisdiction.

In 1980, Petitioner, Jeff Reich, was a candidate in both the primary and general elections for the Fresno County Board of Supervisors, District 5. Reich intends to run for public office in the future.

California law provides that a candidate may submit to the County Clerk a "candidate's statement" to be mailed out in each sample ballot to all of the voters in the candidate's district. Cal. Elect. Code § 10012.

Reich submitted his candidate's statement in English only and signed that statement. Reich notified the County Clerk, in writing, that Reich wanted his candidate's statement to appear in English only. The County Counsel informed Reich that the Voting Rights Act required all voting information in Fresno County to be distributed in Spanish, as well as English.

The County Clerk distributed English and Spanish texts of Reich's candidate's statement. At the end of the distributed English text "s/ Jeff Reich" was printed, correctly representing that Reich had, in fact, signed the English statement. However, at the end of the Spanish text "f/ Jeff Reich" was printed, falsely representing that the Spanish translation had also been "signed by Jeff Reich".

Reich filed suit in the Eastern District of California, seeking declaratory and other appropriate relief. Reich alleged that the actions of the County Clerk were unlawful, because:

(1) the translation of Reich's statement did not exactly convey the meaning he intended,

(2) even if translation of complex political concepts could be exact, forcing Reich to swallow an unwanted translation violates his rights of free expression,

(3) to the extent that the Voting Rights Act required the County Clerk to distribute Reich's statement in Spanish, that Act is unconstitutional, and

(4) the Clerk's actions violate petitioner's rights under Cal. Elec. Code § 10012, which indicates that a candidate may refuse a Spanish translation.

The United States Attorney General intervened.

Without reaching the merits, the District Court granted defendants' motions to dismiss, because 42 U.S.C. § 1973 (l)(b) [Voting Rights Act § 14(b)] grants exclusive jurisdiction to hear constitutional challenges against the Voting Rights Act to the District of Columbia Circuit. That decision was affirmed by the Ninth Circuit Court of Appeals.

REASONS FOR GRANTING THE WRIT

I

A MAN SHOULD BE FREE TO CHOOSE HIS OWN WORDS

The First Amendment protects the right to speak as we choose and the right to refrain from speaking in a form we do not choose. *Wooley v. Maynard*, 430 U.S. 705, 714 (1977).

The government took Reich's words, which he had chosen carefully, then—against Reich's expressed will—translated them into another language and signed Reich's name to the translation. The distribution of that signed translation constitutes a government sponsored fraud on the voters.

Although Reich changed portions of his candidate's statement from the primary to the general election, one crucial word was included in both. In a memo included in Reich's brief filed with the Court of Appeals, Professor Frank Benitez, from California State University, Fresno, contends that both of the two different translations of that same crucial word were inaccurate. The government translation actually insulted a significant portion of the voting population in Reich's name.

Translation of complex political concepts is an art, not a science. So much history can be embodied in so few words. But, requiring a candidate to travel all the way to Washington, D.C. to dispute a translation, forces him to swallow the translator's fiat as to what the candidate wrote and meant.

Candidates who, like Reich, oppose the bilingual ballot nonetheless appear to support it because their names are signed to the translations without their consent.

Whatever the good intentions of the Congressional legislation, it wreaks havoc with First Amendment rights.

II

FORCING A CANDIDATE WHO CLAIMS GOVERNMENT IS ABRIDGING HIS FREEDOM OF POLITICAL EXPRESSION TO BRING SUIT THOUSANDS OF MILES FROM HOME VIOLATES THE FIRST AMENDMENT

The courts below held that Reich must sue in the District of Columbia in order to raise his First Amendment challenges to the bilingual ballot. For a private litigant from California, the District of Columbia requirement does not merely chill First Amendment rights: it freezes them.

Surely, the monetary costs preclude a candidate from challenging abridgement of political speech in a distant forum. But, the heat of a political campaign also prevents such an expedition. With election day fast approaching, for a candidate to find the courthouse door in his own neighborhood is difficult enough, even to defend First Amendment rights.

In its opinion the Court of Appeals stated:

> At oral argument and in his brief, appellant persuasively argued that application of section 14(b) would effectively preclude him from litigating his challenge to the Act because the costs of bringing suit in the District of Columbia would be prohibitively high. We do not dispute the truth of his assertions. Nonetheless, Congress, when it enacted the Voting Rights Act, concluded that the importance of a uniform interpretation of the substantive provisions of the Act by a single district court outweighed the hardship and chilling effect such restraints might have on distant litigants. We cannot second-guess Congress' considered judgment in such legislative matters. (695 F.2d at 1150) (App. A-6, A-7).

The professed effort for uniformity of decision has prevented a conflict of decisions by circuits on Reich's issues. Worse than a conflict of decisions, there is simply no decision, at all.

There are cases upholding the jurisdictional limitation in other contexts. [E.g., *South Carolina v. Katzenbach*, 383 U.S. 301 (1966). However, in *United States v. Sheffield Board of Comm'rs*, 435 U.S. 110, 146-147 (1978), three justices dissented, suggesting that the burden of costs on a small government entity posed by distant litigation could

be unfair. Moreover, *Allen v. State Board of Elections*, 393 U.S. 544, 559 (1969), acknowledges that the costs of litigating in the District of Columbia justified removing the jurisdictional limitation for individuals who sued to enforce the original Voting Rights Act.]

But, this Court has not ruled on the jurisdictional limitation in the context presented here. The issues presented by Reich focus on the quintessence of the First Amendment free expression guarantee—this is much less a voting rights case than it is a First Amendment case. And, First Amendment rights occupy a preferred position in our portfolio of constitutional rights. *Dombrowski v. Pfister*, 380 U.S. 479 (1965).

Roscoe Pound has observed (and numerous historians analyzing the Intolerable Acts have agreed) that centralization of judicial authority in London was a contributing cause to the Revolution. Pound, *Jurisprudence*, Vol. II, 327-328 (1959). Our nation appears to be going full circle, now imposing oppressive litigation hurdles from which our forefathers originally rebelled.

III

THE STRENGTH OF OUR CONSTITUTIONAL DEMOCRACY RESTS ON PROTECTING CANDIDATES' FREEDOM OF POLITICAL EXPRESSION

The political campaign is the heart of American constitutional democracy; the constitutional guarantee to freedom of expression is most crucial in political campaigns. *Brown v. Hartlage*, 102 S.Ct. 1523 (1982).

In California there are 58 counties, some 432 cities, and over 1,100 school districts. Supervisors and other elected county officers (e.g., sheriffs, district attorneys, assessors,

etc.), mayors and councilmen, school board trustees, elected members of numerous special districts, hundreds of superior, municipal, and justice court judges--all may utilize candidate's statements and are affected by this litigation.

The issue presented here is "an important question of federal law"; is free expression in political discourse to be protected? Supreme Court Rules, Rule 19(b).

CONCLUSION

A man should be free to choose his own words.

Forcing a candidate who claims government is abridging his freedom of political expression to bring suit thousands of miles from home violates the First Amendment.

The strength of our constitutional democracy rests on protecting candidates' freedom of political expression.

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Ninth Circuit.

Dated: March 1, 1983.

Respectfully submitted,

JEFF REICH
In Pro Per

Appendix A

No. 80-4587

D.C. No. CV-80-69-EDP

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Jeff Reich,
Plaintiff-Appellant,

v.

Galen Larson, County Clerk of Fresno and
William French Smith,* Attorney General
of the United States,
Defendants-Appellees.

OPINION

Appeal from the United States District Court
for the Eastern District of California
Edward D. Price, District Judge, Presiding
Argued and Submitted: April 13, 1982

[Filed Jan. 4, 1983]

Before: Goodwin, Wallace, and Fletcher, Circuit Judges.
Fletcher, Circuit Judge:

This case involves a question of jurisdiction to hear a challenge to the bilingual assistance provisions of the Voting Rights Act of 1965, 42 U.S.C. § 1973aa-1a(c)(1976). Appellant, Jeff Reich, filed an action in federal district court for the Eastern District of California, contending

*Substitution of parties pursuant to Fed. R. App. P. 43(c)(1).

that the bilingual assistance provisions of the Voting Rights Act violated his first amendment rights because the bilingual provisions require translation of his candidate's election statement into a language other than English before it can be sent out to the voters. The district court dismissed appellant's action without reaching the merits, holding that challenges to enforcement of any provision of the Voting Rights Act can be brought only in the district court for the District of Columbia. 42 U.S.C. § 1973l (b) (1976). We note jurisdiction under 28 U.S.C. § 1291 (1976), and affirm the dismissal of appellant's action.

FACTS

Appellant, Reich, was a candidate for Fresno County Supervisor, District 5, in the 1980 primary and general elections. California law provides that candidates for nonpartisan elective offices may prepare a candidate's statement setting forth the candidate's qualifications. Cal. Elec. Code § 10012 (West Supp. 1981). The county clerk is required to send each voter a pamphlet containing the statement of each candidate and to provide Spanish translations of the statements "to those candidates who *wish* to have one . . . ." *Id.* (emphasis added).

Reich filed a candidate's statement with the clerk for Fresno County. He stated that he wanted his statement to be printed in English only. The Fresno County Counsel advised Reich that the County could not honor his request because the Voting Rights Act required all voting information to be provided in Spanish as well as English.[1] The

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[1]Fresno County, California is covered by section 203(c) of the Voting Rights Act for persons of Spanish heritage. 42 Fed. Reg.

County distributed English and Spanish texts of Reich's candidacy statement. Reich filed suit in the Eastern District of California alleging that the actions of the county clerk violated his first amendment rights and section 10012 of the California Elections Code. He further alleged that, to the extent that the county clerk was required by the Voting Rights Act to distribute his statement in Spanish, those provisions of the Act were unconstitutional.[2]

Reich asked the court for declaratory and other appropriate relief. The district court granted the defendant's motion to dismiss Reich's complaint without reaching the merits because the court found that section 14(b) of the Voting Rights Act, 42 U.S.C. § 1973l(b) (1976), granted exclusive jurisdiction to hear challenges to the Act to the district court for the District of Columbia. Reich filed a timely appeal from the dismissal.

35,971 (1977). Section 203(c) of the Voting Rights Act, 42 U.S.C. § 1973aa-1a(c) (1976) provides in relevant part:

> Whenever any State or political subdivision subject to the prohibition of subsection (b) of this section provides any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, it shall provide them in the language of the applicable minority group as well as in the English language. . . .

[2]Pursuant to 28 U.S.C. § 2403 (1976), the district court certified that the complaint challenged the constitutionality of a federal statute and permitted the United States sixty days to intervene. The Attorney General moved to intervene and to dismiss for lack of subject matter jurisdiction. The county clerk also filed a motion to dimiss for lack of subject matter jurisdiction.

A. The Limitation on Jurisdiction in Section 14(b).

Section 14(b) of the Voting Rights Act, 42 U.S.C. § 1973l(b) (1976) provides in relevant part:

> No court other than the District Court for the District of Columbia . . . shall have jurisdiction to issue any declaratory judgment pursuant to [section 4 or 5] . . . or any restraining order or temporary or permanent injunction against the execution or enforcement of any provision of this subchapter or any action of any federal officer or employee pursuant hereto.

In *South Carolina v. Katzenbach*, 383 U.S. 301, 331 (1966), the Supreme Court held that the section's requirement to litigate in the District of Columbia, a distant forum for the litigants, did not violate due process. However, in *Allen v. State Board of Elections*, 393 U.S. 544, 559 (1969), the Supreme Court interpreted section 14(b) as not applying to suits brought by private persons seeking a declaratory judgment that a new state enactment was subject to section 5 of the Voting Rights Act. The private litigant in *Allen* was thus permitted to bring his action in the local federal district court. Dictum in *Allen* suggests, moreover, that the jurisdictional limitation of section 14(b) applies "only to declaratory judgment actions brought by the State." *Id.* at 559. Reich relies on this dictum to argue that section 14(b) should not be interpreted to deprive the district court for the Eastern District of California of jurisdiction to hear his challenge to the Voting Rights Act. We disagree.

This dictum suggesting an exclusion of private litigants from the reach of section 14(b) applies only to declaratory judment actions brought "pursuant to section 5" (393 U.S.

at 558). In such cases, the issue raised by the private litigant will be "whether a particular state enactment is subject to the provisions of the Voting Rights Act . . . ." (393 U.S. at 559.) This issue can be decided in the district courts, since it is not a "substantive" question such as whether a new enactment is racially discriminatory, or whether the Voting Rights Act itself is constitutional.

Reich's declaratory judgment action is not brought pursuant to section 5. Thus, even though it is an action brought by a private litigant rather than the state, it *does* raise a substantive issue (i.e., whether the Voting Rights Act is constitutional) and can only be brought in the District of Columbia district court, under section 14(b).[3]

This construction is consistent with the legislative history of section 14(b). The Senate Judiciary Committee's report on the Act states:

> Subsection 14(b). This subsection [confines] to the District Court for the District of Columbia jurisdiction to issue any declaratory judgment or any restraining order or temporary or permanent injunction against the execution or enforcement [of] any provision of this bill or any action of a Federal officer or employee under the authority of the bill . . . . *All challenges to the constitutionality or legality of any*

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[3]Appellant also argues that *Allen* indicates that the jurisdictional limitation of section 14(b) is a proper constitutional limitation only on litigation against the federal government. *See Allen*, 393 U.S. at 559. He argues that where, as here, the federal government was not an original party to this suit, application of section 14(b) is improper. We disagree with his interpretation of *Allen*, but we note, also, that the federal government is a party in interest in this case, having intervened in Reich's suit as a matter of right. 28 U.S.C. § 2403 (1976).

> *provision of this bill or any action taken pursuant to it must be litigated in the District Court for the District of Columbia . . . .*

S. Rep. No. 162, Pt. 3, 89th Cong., 1st Sess. 30-31 *reprinted in* 1965 U.S. Code Cong. and Ad. News 2508, 2569.[4] Accordingly, we conclude that Section 14(b) applies to all suits, whether brought by an individual or a state, which raise constitutional challenges to the Voting Rights Act.

Appellant's claims raise a constitutional challenge to the Act. He argues that the bilingual assistance provisions of the Act infringe his first amendment rights to communicate in his own words with the voters in a local election. He would have the local district court take jurisdiction of his suit and declare these provisions of the Act[5] unconstitutional. Unfortunately, only the district court for the District of Columbia may hear such a suit.

At oral argument and in his brief, appellant persuasively argued that application of section 14(b) would effectively preclude him from litigating his challenge to the Act because the costs of bringing suit in the District of Columbia would be prohibitively high. We do not dispute the truth of his assertions. Nonetheless, Congress, when it enacted the Voting Rights Act, concluded that the importance of a uniform interpretation of the substantive provisions of the

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[4]Reich argues incorrectly that this legislative history from the original 1965 enactment of the Voting Rights Act is not relevant to interpreting the effect of section 14(b) on the bilingual assistance provisions which were enacted along with other amendments to the Voting Rights Act in 1975. However, when Congress enacted the 1975 amendments to the Act, both houses considered and rejected amendments which would have vested section 14(b) jurisdiction in local district courts. 121 Cong. Rec. 16,900-01, 24,716-723 (1975).

[5]As amended by the Voting Rights Act amendments of 1975.

Act by a single district court outweighed the hardship and chilling effect such restraints might have on distant litigants. We cannot second-guess Congress' considered judgment in such legislative matters. Accordingly, we agree with the district court for the Eastern District of California that it had no jurisdiction to hear the instant suit.

B. First Amendment Exception to the Jurisdictional Limitation of Section 14(b).

Appellant advances the novel argument that even if section 14(b) would normally preclude local district court jurisdiction to hear a constitutional challenge to the Voting Rights Act, where, as here, the constitutional challenge to the Act is predicated on a violation of the First Amendment, an exception to the jurisdictional limitations imposed by Section 14(b) should be recognized. Reich contends that the Supreme Court has held that First Amendment rights occupy a preferred position in the constellation of rights guaranteed by the Constitution, and that these rights should be favored when they come into conflict with other rights. *See Dombrowski v. Pfister,* 380 U.S. 479 (1965). Appellant therefore concludes that "[i]t is outrageous for a [First Amendment case] to be strapped with the [section 14(b)] District of Columbia requirement—for a private litigant, the District of Columbia requirement [chills] first amendment rights [because] the costs [of litigating in the District of Columbia] are prohibitive."

At best, *Dombrowski* offers weak support for appellant's position. While *Dombrowski* does recognize the importance of free expression among our constitutionally protected rights, there is simply no basis for appellant's reading of the case to support a general exception from jurisdictional

or prudential limitations on suits that raise first amendment issues. Instead, *Dombrowski* stands for the much narrower proposition that a federal court could enjoin a state court criminal prosecution where the plaintiffs challenged the constitutionality of an overbroad criminal statute and alleged that bad faith prosecution under the statute had a chilling effect on their exercise of their first amendment rights. *Id.* at 492.

Though the burdens to appellant of litigating his first amendment challenge to the Voting Rights Act in a distant forum may be real and substantial, the Act's requirement that he litigate in the District Court for the District of Columbia neither unconstitutionally infringes his first amendment rights nor deprives him of due process. Accordingly, the judgment of the district court dismissing appellant's suit for lack of jurisdiction is AFFIRMED.

Appendix B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
CV 80-69-EDP

Jeff Reich,
Plaintiff,

v.

Galen Larson, County Clerk of the County of Fresno, and
Benjamin R. Civeletti, Attorney General
of the United States,
Defendants.

[Filed Nov. 7, 1980]

Order Approving Magistrate's Recommendation

On September 26, 1980, the Magistrate filed his recommendation to grant the defendants' Motion to Dismiss Plaintiff's Complaint. No objection to the Magistrate's recommendation has been filed.

This court has reviewed the entire record in this matter and concurs with the Magistrate's conclusion that this court lacks jurisdiction, which, of course, is always a threshold issue in a federal district court; the court does not reach the question of plaintiff's standing to bring this action. Hence, the Magistrate's recommendation on plaintiff's standing is disapproved.

The Voting Rights Act, and specifically § 1973(l)(b) provides that jurisdiction lies exclusively in the district court for the District of Columbia or a court of appeals as to any action brought for declaratory relief pertaining to

the provisions of the Voting Rights Act, and any action for injunctive relief against the execution or enforcement of any provisions of the Act which are pertinent to this case.

Plaintiff's reliance on the Supreme Court's interpretation of the foregoing section in *Allen v. Board of Elections* (1969), 393 U.S. 544, 22 L.Ed.2d 1, 89 S.Ct. 917, is misplaced. In that action, the Supreme Court carefully drew two distinctions which plaintiff apparently confused, i.e., "magnitude" and access.

First, the court alluded to the situation where a state wishing to amend its election laws, desired an early judicial determination as to whether or not the proposed legislative changes complied with the requirements of the Act. Since the state itself would be the moving party in such actions, a court determined that the placing of venue in the District of Columbia or courts of appeal would not work a burden on such litigants. Further, the declaratory judgment brought by the state necessarily requires an adjudication, but the proposed state enactment does not have the purpose or effect of racial discrimination.

If the purpose of the action is to prohibit by injunction, the enforcement of the Voting Rights Act, such a case would necessarily involve the constitutionality of the Act itself.

The *Allen* court concluded that racial discrimination and constitutionality were issues of substantial magnitude. Congress, it said, acting under its authority under Article 3, § 1 of the Constitution could properly vest cases involving such important issues only in the District of Columbia.

The *Allen* court further distinguished these two types of action with the action of an individual under § 12(d) of the Act to "enjoin a person from acting when there is reasonable grounds to believe that [such person is about to engage in any act or practice prohibited by § 5].

First, the court reasoned properly, individuals who were adversely affected by the Act would not have easy access to either the courts of appeal or the district court of the District of Columbia. However, the court pointed out that since such actions would deal only with the proper *enforcement* of the Act, neither the constitutionality of the Act nor a determination of racial discrimination are issues which would be reached in such action.

This court's jurisdiction, then, is based on a twofold test; i.e., "magnitude" of the issues involved, as well as consideration of the status of the individual. *Allen* then turned on these distinctions, and not upon the distinction urged here by the plaintiff.

Therefore, the defendants' Motion to Dismiss is granted.

Dated: November 7, 1980.

/s/ EDWARD DEAN PRICE
United States District Judge

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CLERK

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JEFF REICH, PETITIONER

v.

GALEN LARSON, COUNTY CLERK OF COUNTY OF FRESNO,
and
WILLIAM FRENCH SMITH, ATTORNEY GENERAL

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE ATTORNEY GENERAL IN OPPOSITION

REX E. LEE
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In the Supreme Court of the United States

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No. 82-1498

JEFF REICH, PETITIONER

v.

GALEN LARSON, COUNTY CLERK OF COUNTY OF FRESNO, and
WILLIAM FRENCH SMITH, ATTORNEY GENERAL

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE ATTORNEY GENERAL IN OPPOSITION

Petitioner seeks review (Pet. 4-8) of the decision of the court of appeals that Section 14(b) of the Voting Rights Act of 1965, 42 U.S.C. 1973*l*(b), vests exclusive jurisdiction in the District Court for the District of Columbia over petitioner's claim that the bilingual assistance requirements in Section 203(c) of the Voting Rights Act of 1965, 42 U.S.C. 1973aa-1a(c), violate the First Amendment as applied to him.

1. Petitioner was a candidate for Fresno County Supervisor for District 5 in the primary and general elections in 1980 (Pet. App. A-2). Pursuant to state law (Cal. Elec. Code § 10012 (West Supp. 1983)), the County Clerk was empowered to print pamphlets containing each candidate's statement of qualifications and to provide a Spanish translation of the statements "to those candidates who wish to have one

* * * " (Pet. App. A-2). Petitioner expressed a preference for having his statement printed only in English and therefore provided no Spanish translation. Relying upon the advice of County Counsel that federal law required the statement to be translated,[1] respondent Larson, the Fresno County Clerk, had the statement translated into Spanish and distributed it in both languages (*id.* at A-2 to A-3).

2. Petitioner filed suit against respondent Larson in the United States District Court for the Eastern District of California, seeking a declaratory judgment that the translation of his statement and its distribution to the voters violated the First Amendment and California's Election Code, and that, to the extent the translation was required by the Voting Rights Act, that law also violated the First Amendment (Pet. App. A-3). Pursuant to 28 U.S.C. 2403, the district court certified to the Attorney General that the constitutionality of a federal statute had been placed in question, and the Attorney General intervened (Pet. App. A-3).

The district court dismissed petitioner's suit for lack of subject matter jurisdiction (Pet. App. A-9 to A-11). The court held that under Section 14(b) of the Voting Rights Act

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[1]Fresno County, California is covered under Section 203(b) of the Voting Rights Act for persons of Spanish heritage. 42 Fed. Reg. 35971 (1977). As such, whenever the county (42 U.S.C. 1973aa-1a(c)):

> provides any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, it shall provide them in [Spanish] as well as in the English language * * *.

of 1965, 42 U.S.C. 1973*l*(b),[2] jurisdiction over all suits filed to challenge the constitutionality of any provision of the Voting Rights Act lies exclusively in the District Court for the District of Columbia (Pet. App. A-9).

The court of appeals affirmed (Pet. App. A-1 to A-3). It found that by enacting Section 14(b) Congress expressly intended for all suits challenging the constitutionality of the Voting Rights Act to be litigated in the District of Columbia. S. Rep. No. 162 (Pt. 3), 89th Cong., 1st Sess. 30-31 (1965) (Pet. App. A-6 to A-7). It also noted (Pet. App. A-4) that this Court had upheld the constitutionality of Section 14(b) against a due process challenge in *South Carolina* v. *Katzenbach*, 383 U.S. 301, 331 (1966), and rejected petitioner's assertion that a different result was warranted simply because his claim was based on the First Amendment (Pet. App. A-7 to A-8).[3]

3. Petitioner presents no question warranting review by this Court. His constitutional challenge to the bilingual assistance provisions (Pet. 4-5, 7-8) has not been adjudicated on the merits by the courts below, and thus is not properly before this Court.

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[2]Section 14(b), 42 U.S.C. 1973*l*(b) provides, in pertinent part:

> No court other than the District Court for the District of Columbia * * * shall have jurisdiction to issue any declaratory judgment pursuant to [section 4 or 5] * * * or any restraining order or temporary or permanent injunction against the execution or enforcement of any provision of [this] subchapter * * * or any action of any Federal officer or employee pursuant hereto.

[3]The court of appeals also distinguished this Court's decision in *Allen* v. *State Board of Elections*, 393 U.S. 544 (1969), which allowed private litigants to file suit in local federal courts seeking a declaration that a state has implemented a voting change subject to the preclearance requirements in Section 5 of the Act, 42 U.S.C. 1973c (Pet. App. A-4 to A-5). The court held that, unlike the suit in *Allen*, petitioner's suit was not based on Section 5; instead, it directly challenged the validity of one of the provisions in the Voting Rights Act and thus was squarely covered by the jurisdictional limitation in Section 14(b) (Pet. App. A-5).

The only issue is whether the courts below properly held that they lacked jurisdiction over this challenge to the constitutionality of Section 203 of the Act as applied to petitioner. Every court that has been presented with a constitutional challenge to a provision of the Voting Rights Act has held that such actions must be brought in the District Court for the District of Columbia. *United States* v. *Ramsey*, 353 F.2d 650, 656 (5th Cir. 1965); *Perez* v. *Rhiddlehoover*, 247 F. Supp. 65, 71-72 (E.D. La. 1965); *Morgan* v. *Katzenbach*, 247 F. Supp. 196, 198-199 (D. D.C. 1965), rev'd on other grounds, 384 U.S. 641 (1966); *O'Keefe* v. *New York City Board of Elections*, 246 F. Supp. 978, 981 (S.D. N.Y. 1965); *McCann* v. *Paris*, 244 F. Supp. 870, 872 (W.D. Va. 1965); cf. *South Carolina* v. *Katzenbach*, *supra*.

Petitioner argues (Pet. 5-7), however, that even if the jurisdictional limitation in Section 14(b) is appropriate in other contexts, it is not appropriate if it precludes a plaintiff from vindicating First Amendment rights by requiring him to litigate at substantial expense in a distant forum. The Ninth Circuit, however, correctly rejected this mixed statutory and constitutional claim (Pet. App. A-7 to A-8). First, the legislative history regarding Section 14(b) plainly indicates that the provision is applicable to *all* suits challenging the legality of any part of the Voting Rights Act, in order to assure a uniform interpretation of the requirements of the Act. See S. Rep. No. 162 (Pt. 3), *supra*, at 30-31. Second, *South Carolina* v. *Katzenbach*, *supra*, makes equally clear that the hardship imposed upon a litigant by being forced to litigate in a distant forum is no basis for holding Section 14(b) unconstitutional. Petitioner has an avenue of redress available in the District of Columbia for his constitutional claim; no more is constitutionally required. Since the decision of the court of appeals is based on a correct reading of Section 14(b) and does not conflict with any decision of this Court or any other court of appeals, it does not warrant further review.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

REX E. LEE
Solicitor General

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